

Application No.: 09/908,731
Response Under 37 C.F.R. §1.116 Dated April 30, 2004
Response to the Office Action of December 31, 2003

REMARKS

Claims 1 – 11 and 13 – 19 remain pending in the present application. No amendments were made by the present response. Reconsideration of the claims is respectfully requested in view of the following discussion.

Rejections Under 35 U.S.C. §103:

Claims 1 – 11 and 13 – 19 were rejected under 35 U.S.C. §103 over **Ha et al.** (USP 6,493,051). These rejections are improper and should be withdrawn because **Ha** does not qualify as prior art.

The reference to **Ha** was first made in the Office Action dated January 29, 2003. In response, the Amendment filed April 29, 2003 included a certified translation of the foreign priority Japanese Application No. 2000-220116, dated July 21, 2000. The submission of the certified translation of the foreign priority application perfected the Applicant's requirements under 37 C.F.R. §1.55(a)(4) to overcome the date of the **Ha** reference relied upon by the Examiner (see also, MPEP §201.15).

In particular, the **Ha** reference was published (as a published U.S. Application on August 30, 2001, and as a published U.S. Patent on December 10, 2002) *after* the U.S. filing date of July 20, 2001 for the present application. And, the **Ha** reference was filed in the U.S. on December 6, 2000 *before* the U.S. filing date of the present application. Therefore, **Ha** could only have qualified as prior art under 35 USC §102(e). However, the Applicant's submission of a certified translation of the foreign priority document for the present application properly antedated the **Ha**

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reference. Therefore, the **Ha** reference may not be relied upon since it does not constitute prior art.

It should also be noted that rejecting the claims under §103 (instead of under §102) does not change the fact that **Ha** does not qualify as prior art. Indeed, references cited for 35 U.S.C. §103 must first qualify as prior art under one of the provisions of 35 U.S.C. §102. Since **Ha** does not qualify as prior art under any of the provisions of §102, **Ha** also does not qualify as prior art for §103. Therefore, the rejections set forth in the Office Action relying solely on the reference to **Ha** are improper and should be withdrawn.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 50-2866.

Respectfully Submitted,

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